IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3032 OF 1994

Ramesh Ramchandra Pophale .... Petitioner

versus

The Kankavali Sikshan Sanstha
and others ..... Respondent.

Mr. Mihir Desai for the petitioner
Mr. S.K.Chinchalikar AGP for Respondents 3 and 4.

CORAM; A.P. DESHPANDE, J.
DATED; 11TH JUNE, 2007

P.C.;

1. The present petitioner questions the legality and validity of the judgment and order passed by the School Tribunal whereby the appeal filed by the petitioner against the order of termination came to be dismissed on 22-4-1994.

2. The respondent no.1 administers a school by name Shivaji Memorial High School and Karamvir Yeshwantrao Naik Technical High School at Kankavli. District Sindhudurg. Respondent no.2 school has a technical stream. In the said technical stream three subjects were being taught and the same are (1) Fitter, (2) Wireman and (3) Carpenter. The petitioner had possessed a certificate in the course of turner from

I.T.I. which is a requisite qualification for being an instructor in the trade of Turner. It so happened that though the petitioner possessed qualification for being appointed as instructor in the trade of Turner, he was actually appointed as instructor in the trade of Fitter, for which he did not possess the requisite eligibility.

3. The petitioner was appointed in the year 1986. During the course of time, it transpired that the petitioner being only eligible to teach as instructor in the trade of Turner, he was wrongly appointed as Instructor in Fitter trade and that he did not possess the qualification for the instructor of Fitter. The petitioner so also the respondent no.1 the management approached the Director of Technical Education with a request to permit the petitioner to appear for certificate examination for Fitter’s Trade. The department granted permission to the petitioner to appear for the examination of the year 1992-93. The petitioner was put to notice that if he fails to pass the examination, his appointment will not be approved by the department.

4. The learned AGP appearing for the respondent has placed on record an undertaking executed by the petitioner dated 30th June 1992 stating therein that

the petitioner will completed the I.T.I. course in the trade of Fitter by January 1993. It is further stated in the undertaking that if the petitioner fails to acquire requisite qualification by January 1993 the petitioner will not claim, any right to continue in the service thereafter. The petitioner was permitted to appear for the examination but unfortunately he failed to pass. The mark sheet is placed on record as Exh.H and it is seen from that the petitioner has failed in one subject. The learned counsel for the petitioner has submitted that the petitioner could not pass the examination for the reasons beyond his control. In view of the fact that the petitioner could not acquire the necessary eligibility qualification, the management terminated him from service and aggrieved thereby the petitioner preferred an appeal before the School Tribunal.

5. The Tribunal recorded a finding that the petitioner did not possess the qualification prescribed by Schedule B Part III/8 read with Rule 6 of the Rules 1981. The Tribunal has also concluded that the petitioner who does not possess the requisite certificate in I.T.I. cannot be said to be fully qualified so as to claim permanency. It is not in dispute that the petitioner was asked to pass the examination for Fitter but he failed to pass before

the academic year 1993-94. Hence no fault can be found with the order passed by the School Tribunal rejecting the appeal filed by the petitioner.

6. The learned counsel for the respondent also submits that the petitioner should be offered one more opportunity to obtain the ITI certificate by permitting him one more chance to appear for the examination. During the pendency of this petition for the last 12 years, the petitioner has not made any application for that purpose. Hence no orders in that regard can be passed by this court exercising jurisdiction under Article 227 of the Constitution.

7. In the result the writ petition fails and it is dismissed. Rule is discharged. At this stage the learned counsel for the petitioner seeks stay of this judgment for a period of four weeks. The prayer made seems to be just and reasonable and the same is therefore granted. The operation of the judgment is hereby stayed for a period of four weeks from the date of this order.

8 In view of the disposal of the writ petition, the civil application does not survive and it is also disposed of.

...